

**DECISION**

17603<sup>5</sup> Aggarian  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-197533**DATE:** April 3, 1981**MATTER OF:** Part-Time Immigration Inspectors—Pay  
For Work on Sundays and Holidays

**DIGEST:** Decision B-197533, July 1, 1980, did not change rule set forth in 49 Comp. Gen. 577 (1970) that part-time immigration inspectors are entitled to 2 days extra pay under 8 U.S.C. § 1353a for Sunday and holiday work. Statement in B-197533 July 1, 1980, that part-time inspectors with a regularly scheduled administrative workweek should be compensated for overtime on Sundays and holidays under the Federal Employees Pay Act of 1945 was referring to hours of work in excess of 8 hours on such days.

This action is in response to a request for an advance decision by the Comptroller of the United States Customs Service, Department of the Treasury, for a clarification of our decision B-197533, July 1, 1980, insofar as it relates to the Sunday and holiday pay entitlement of part-time immigration and customs inspectors.

In B-197533 we held that regular part-time immigration inspectors are not entitled to the special rate of pay authorized by 8 U.S.C. § 1353a for overtime work between the hours of 5 p.m. and 8 a.m. The Customs Service is concerned that the last paragraph of that decision conflicts with our holding in 49 Comp. Gen. 577 (1970) that part-time inspectors are nonetheless entitled to the special Sunday and holiday pay authorized by 8 U.S.C. § 1353a. As noted in that decision, the language of the Customs overtime provisions, 19 U.S.C. §§ 267 and 1451, is similar to that found in 8 U.S.C. § 1353a, and the courts have routinely applied payment of the special rate of overtime in the same manner under both statutes. See Bishop v. United States, 174 Ct. Cl. 31, 38 (1966).

Our determination in B-197533 was based upon 49 Comp. Gen. 577 (1970) wherein we held that part-time immigration inspectors employed on an intermittent basis are not entitled to additional compensation for

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B-197533

work between 5 p.m. and 8 a.m. under 8 U.S.C. § 1353a. In concluding that the particular language of section 1353a authorizing special pay for work between 5 p.m. and 8 a.m. applied only to overtime work performed by full-time employees with regular tours of duty, our decision in 49 Comp. Gen. 577 was based in part on the holding in United States v. Myers 320 U.S. 561 (1944). In Myers the Supreme Court held that the extra compensation authorized for work between 5 p.m. and 8 a.m. by the Customs overtime provision, 19 U.S.C. § 267, could not be paid until the employee had performed his regular tour of duty. As stated in our decisions 49 Comp. Gen. 577 and B-197533, supra, we view the court's reference to "regular tour of duty" as intended to apply only to full-time duty.

In 49 Comp. Gen. 577 we distinguished between part-time inspectors' entitlement to the additional compensation authorized by 8 U.S.C. § 1353a for work between 5 p.m. and 8 a.m. and the special pay authorized by that statute for Sunday and holiday work. That distinction was predicated on the following discussion at page 574 of the Myers decision concerning extra pay for Sunday and holiday duty under 19 U.S.C. § 267:

"As to Sundays and holidays, we construe the statute to require extra compensation for inspectors without regard to the hours of the day or whether such services are additional to a regular weekly tour of duty."

Accordingly, we held in 49 Comp. Gen. 577 that intermittent employees are entitled to the extra pay authorized by 8 U.S.C. § 1353a for Sunday and holiday service.

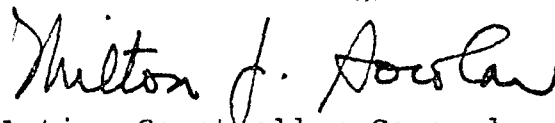
The Customs Service is concerned about the effect on entitlement to pay for work on Sundays and holidays of the language in the final paragraph of our decision B-197533, supra, wherein we state that:

"\* \* \* part-time inspectors with a regularly scheduled administrative workweek should be compensated for

B-197533

overtime on Sundays and holidays under the provisions of the Federal Employees Pay Act of 1945."

The above statement contained in our decision of July 1, 1980, was not intended to change the rule concerning the entitlement of part-time employees to extra pay under 8 U.S.C. § 1353a and 19 U.S.C. § 267 for Sunday and holiday work. That statement concerns the entitlement of part-time inspectors to compensation for overtime work, in excess of 8 hours, on a Sunday or holiday and does not apply to work of up to 8 hours on such days. Accordingly, our decision in B-197533 is not to be viewed as modifying the holding in 49 Comp. Gen. 577 that part-time immigration inspectors are entitled to 2 days extra pay under 8 U.S.C. § 1353a for work of 8 hours or less on a Sunday or a holiday. It merely emphasizes that compensation for any work in excess of 8 hours on such days shall be under the Federal employees pay provisions in 5 U.S.C. § 5542(a). Part-time customs inspectors are to be compensated in the same manner for work on Sundays and holidays.



Acting Comptroller General  
of the United States